



**[6450-01-P]**

**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**[Case No. RF-038]**

**Decision and Order Denying a Waiver to Felix Storch, Inc. (FSI) from the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Decision and Order.

**SUMMARY:** The U.S. Department of Energy (DOE) gives notice of its decision and order (Case No. RF-038) denying Felix Storch, Inc. a waiver from the DOE electric refrigerator and refrigerator-freezer test procedures used for determining the energy consumption of residential refrigerator-freezers for the basic models set forth in its petition for waiver. The decision and order continues to require that the currently applicable DOE test procedure be used when testing the company's Keg Beer Coolers, Assisted Living Refrigerator-freezers and Ultra-Compact Hotel Refrigerators.

**DATES:** This Decision and Order is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-0371, E-mail: [Bryan.Berringer@ee.doe.gov](mailto:Bryan.Berringer@ee.doe.gov).

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**SUPPLEMENTARY INFORMATION:** In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order denies Felix Storch, Inc. (FSI) a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures found in 10 CFR part 430, subpart B, appendix A1 and appendix A for certain basic models of its Keg Beer Coolers, Assisted Living Refrigerator-freezers and Hotel Refrigerators and Ultra-Compact Hotel Refrigerators, as applicable. Under today's decision and order, FSI must continue to use the applicable DOE test procedure found in 10 CFR part 430, subpart B, appendix A1 and appendix A.

Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on August 13, 2014.

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Kathleen B. Hogan  
Deputy Assistant Secretary for Energy Efficiency  
Energy Efficiency and Renewable Energy

## Decision and Order

*In the Matter of:* Felix Storch, Inc. (FSI) (Case No. RF-038)

### I. *Background and Authority*

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 (42 U.S.C. 6291-6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential electric refrigerators and refrigerator-freezers that are the focus of this notice.<sup>1</sup> Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential electric refrigerators and refrigerator-freezers is currently set forth in 10 CFR part 430, subpart B, appendix A1. That procedure will be superseded by a new Appendix A contained in the same part and subpart. Manufacturers are required to use Appendix A starting in September 2014.

The regulations set forth in 10 CFR 430.27, which were recently amended, contain provisions that enable a person to petition DOE to obtain a waiver from the test procedure requirements for covered products. See 79 FR 26591 (May 9, 2014) (revising 10 CFR 430.27, effective June 9, 2014). (DOE notes that while the previous version of 10 CFR 430.27 was

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<sup>1</sup> For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

effective at the time of FSI's submission, the substantive aspects of this regulation have not been changed by the May 9<sup>th</sup> rule.) A person may petition for a waiver from the test procedure requirements that would ordinarily apply to a particular basic model covered under DOE's regulations when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1) (noting that a person may petition to waive for a particular basic model any requirements of 10 CFR 430.23 or of "any appendix" under 10 CFR part 430, subpart B). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. See 10 CFR 430.27(l) (prior to June 9, 2014) and 10 CFR 430.27(f)(2) (effective June 9, 2014). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m) (prior to June 9, 2014). See also 10 CFR 430.27(h) (effective June 9, 2014).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears

likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

## II. *FSI's Petition for Waiver: Assertions and Determinations*

On December 12 and 17, 2013, FSI submitted two separate petitions for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendices A and A1. The December 12<sup>th</sup> petition, which was accompanied by a request for an interim waiver that DOE denied, sought a waiver from appendices A1 and A with respect to the following specific product and model lines – Keg Beer Coolers (Models SBC590, SBC590OS, and SBC635M), Assisted Living Refrigerator-freezers (Models ALBF44 and ALBF68), and Hotel Refrigerators (Models HTL2 and HTL3).<sup>2</sup> The December 17<sup>th</sup> petition, which was not accompanied by a request for an interim waiver, sought a waiver from the upcoming test procedure requirements in appendix A, which will be required to be used starting in September 2014, for the following specific product and model lines -- Keg Beer Coolers (Models SBC490B and SBC570R), Assisted Living Refrigerators (Models FF71TB, FF73, FF74, AL650R, ALB651BR, AL652BR, ALB653BR, CT66RADA, CT67RADA, AL750R, ALB751R, AL752BR, and ALB753LBR), and Ultra-Compact, Hotel Refrigerators (Models FF28LH, FF29BKH, FFAR21H, and FFAR2H). FSI did not contend in either petition that the products at issue have a design characteristic preventing the testing of any

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<sup>2</sup> The caption to the December 12<sup>th</sup> petition stated that FSI is seeking a waiver from both appendix A1 and appendix A. However, the actual relief sought, as stated in the conclusion of FSI's petition, states that the company is seeking to waive the applicability of appendix A from its products. Regarding the products affected by this petition, DOE is viewing FSI's request as applying to both appendices A1 and A.

of the affected models. FSI also asserted generally that a denial of its waiver request would result in economic hardship.

With respect to the technical aspects of its petition, FSI asserted that its products could not be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. In particular, it asserted that the DOE test procedures for residential refrigeration products (both the current Appendix A1 and the new Appendix A that will be mandatory beginning on September 15, 2014) require that FSI's products be tested under conditions that would not, in its view, yield a fair and accurate representation of the actual energy use of its products. FSI stated that DOE's procedure (both current and future) require an ambient temperature of 90 °F, which would, in FSI's view, yield results that would not accurately reflect the energy use of its products during normal use.

The 90 °F ambient temperature condition simulates the effects of door openings and closings, which are not performed during testing. See 10 CFR 430.23(a)(10) (explaining that “[t]he intent of the energy test procedure is to simulate typical room conditions (approximately 70°F (21°C)) with door openings, by testing at 90°F (32.2°C) without door openings.”). As FSI pointed out, this particular aspect of the procedure, which has been widely accepted by industry, has been in place for at least 30 years. See, e.g. FSI Petition at 3 (Dec. 12, 2013). FSI contended that the products addressed by its waiver petitions will be sold for uses where door openings and closings are highly infrequent. As a result, in its view, testing these products in accordance with the required DOE test procedure conditions, which are based on long-accepted industry-based testing standards, would result in measurements of energy use that are

unrepresentative of the actual energy use of its products when considering the conditions of expected use by consumers.

As an alternative to the DOE test procedure, FSI submitted an alternate test procedure to account for the energy consumption of its products. That procedure would test these units at 70°F or 72°F over a 24-hour period instead of the required 90°F ambient temperature condition. In FSI's view, using this alternate test procedure will allow for the accurate measurement of the energy use of its products.

On March 17, 2014, DOE published FSI's petitions for waiver in their entirety. That notice also denied FSI's request for an interim waiver from the test procedure. 79 FR 14686. In explaining its denial of FSI's interim waiver request, DOE indicated that FSI's petition provided insufficient information for DOE to determine whether the alternative test procedure that FSI proposed to use would be likely to provide a measurement of the energy use of these products that is representative of their operation under conditions of expected consumer use. Since DOE had found it unlikely that FSI's waiver petition would be granted and had determined that it was not desirable for public policy reasons to grant FSI with immediate relief, DOE declined to grant an interim waiver and sought additional information on the underlying basis for FSI's proposed alternative. In seeking comments on FSI's proposal, DOE noted that the existing test procedures in appendices A (refrigerators and refrigerator-freezers) and B (freezers) to subpart B of 10 CFR part 430, as well as recent test procedure waivers, contain a method for addressing certain types of products for which less frequent door openings occur. See 79 FR at 14688. Specifically, the test procedure for residential freezers, which continues to apply a 90 °F ambient temperature



during testing, applies an adjustment factor to account for the relatively fewer expected door openings of upright and chest freezers, each of which has a corresponding adjustment factor for the overall energy use.

DOE received a single comment in response to the March 17th notice. That comment, a submission from FSI dated April 14, 2014, disagreed with DOE's decision to deny FSI's interim waiver. In support of its position, FSI restated the general position expressed in its petition regarding the less frequent door openings it expected its products to experience, which it believed justified its claim that testing at 90 °F would result in measurements of energy consumption that were not representative of its products' energy use. FSI further stated that if DOE were to deny FSI's waiver request, it would be less able to plan its product selection, marketing, and sales programs and would be placed at a competitive disadvantage compared with larger multinational appliance manufacturers. FSI also indicated that if its products were to be forced off the market, the hotel industry may increasingly turn to more consumptive products such as those that rely on thermoelectric or absorption cooling.

To support its view, FSI cited several studies preceding DOE's recent efforts to update and revise its test procedures that evaluated the representativeness of the 90 °F test condition. While some of the studies do indicate that the 90 °F test condition is an imperfect approximation of the additional thermal loading imposed by the door openings expected during typical consumer use, the extent to which the findings can be generalized to all products covered by DOE standards on a national basis is limited in several respects. For example, some studies were based on a relatively small sample of products (e.g., one study used only two units), others were

based on in situ (i.e. on-site) test conditions that may not be representative at a national level (e.g., one study only evaluated homes in Florida), and not all studies relied on testing conducted in a manner consistent with the DOE test in respects other than that 90 °F test condition (e.g., one study tested the units with spacing to the wall behind the unit closer than DOE requires). FSI also cited results from its own testing of the products that are the subject of the petition. FSI claimed that its test data demonstrate that the 90 °F test condition is not appropriate. (FSI did not submit any of the reports from this testing.) These various pieces of information, however, do not substantiate FSI's claim that its products experience fewer door openings during actual use or that its suggested alternate temperature conditions would be appropriate in this context.

DOE notes that it first adopted the 90 °F ambient test condition in 1977 after conducting a public notice and comment proceeding to discuss the merits of a proposed test procedure that included the possibility of adopting the 90 °F ambient temperature condition or a higher one. See 42 FR 46140, 46142 (Sept. 14, 1977) (rejecting adoption of a 104 °F ambient test condition in favor of 90 °F). DOE explained the basis for selecting this temperature condition in its proposal leading to that final rule by noting in part that the selected temperature is designed to compensate for door openings when they occur and a correction factor can be applied “when appropriate.” 42 FR 21584, 21586 (April 27, 1977). Further, the industry's more recent efforts at revising and updating the test procedures for refrigerators, refrigerator-freezers, and freezers have continued to consistently apply the 90 °F ambient condition during testing. These industry efforts culminated in the development of the current version of the Association of Home Appliance Manufacturers' Energy and Internal Volume of Refrigerating Appliances, HRF-1-2008 (“HRF-1”), which DOE has incorporated by reference into its regulations. See 77 FR 3559

(Jan. 25, 2012) and 79 FR 22320 (April 21, 2014). That industry procedure continues to rely on the 90 °F ambient condition during testing. See HRF-1, sec. 1.2. The continued reliance on this ambient condition indicates that it continues to provide materially accurate comparative data that are representative of the true energy consumption characteristics of the various categories of refrigerators, refrigerator-freezers, and freezers.

In view of the substantial amount of effort and analysis conducted both by the industry and DOE regarding the appropriateness of applying a 90 °F ambient condition, the supporting information offered by FSI does not provide a sufficient basis for permitting the use of an alternative procedure for the particular products addressed in FSI's petition. Additionally, the limited information provided by FSI (i.e. summary results without supporting data) does not indicate that its alternative testing approach would be appropriate.

FSI also cited the requirement in EPCA that DOE's "test procedures be reasonably designed to measure energy consumption representatively and not be unduly burdensome to conduct." DOE notes that the complete text of this section, found at 42 U.S.C. 6293(b)(3), states that "any test procedures prescribed under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary." Emphasis added.

In DOE's view, adopting FSI's alternative testing method would prevent DOE from providing a test procedure that would meet the statutory requirement prescribed in 42 U.S.C. 6293. The already prescribed 90 °F ambient condition has been substantially vetted and accepted by the refrigeration industry for decades and is widely viewed as being reasonably designed to produce results that measure the energy use and efficiency of refrigerators, refrigerator-freezers, and freezers – such as those at issue in FSI's petitions -- during a representative average use cycle or period of use. Given this background, and the limited supporting data offered by FSI in favor of an alternative test procedure, DOE cannot conclude that a waiver is appropriate with respect to FSI's request.

Lastly, FSI asserted that it would suffer unnecessary economic hardship and financial burdens if it is not granted a test procedure waiver. DOE notes that the criteria for granting a waiver, in contrast to an interim waiver, do not weigh the potential economic hardships that a particular applicant may claim are likely to occur. Notwithstanding this fact, FSI provided no financial details following the publication of its petition that would demonstrate the extent of any economic hardship or impact that would have enabled DOE to further evaluate the merits of FSI's claim. And as indicated in DOE's earlier notice denying FSI's request for an interim waiver, the company did not provide sufficient information for DOE to evaluate its claim. See 79 FR at 14688. Accordingly, DOE cannot provide FSI with the relief it seeks under its claims of economic hardship.

### III. *Conclusion*

As DOE stated previously in its March 2014 notice, FSI's waiver petition did not provide DOE with sufficient information to establish that FSI's alternative test procedure would evaluate its models in a manner that is representative of their actual energy use under conditions of expected consumer use. Since it did not appear likely that FSI's petition for waiver would be granted as submitted and that it is not desirable for public policy reasons to grant FSI immediate relief pending a determination on the petition for waiver, DOE declined to grant FSI's request for an interim waiver and sought comment from stakeholders and the public on the merits of FSI's proposed alternative test method. While FSI submitted comments disagreeing with DOE's decision, those comments did not provide sufficient justification for DOE to change its decision in light of the issues discussed above. However, should FSI or other interested stakeholders raise this issue in the context of a test procedure rulemaking or revised petition for waiver, DOE may consider the adoption of an alternative approach such as an appropriate adjustment factor to reassess the situation presented by FSI. At this time, however, given the absence of sufficient information, DOE cannot grant FSI's petition for waiver as requested.

Thus, by this decision and order, DOE denies FSI's waiver request from the applicable residential refrigerator and refrigerator-freezer test procedures found in 10 CFR part 430, subpart B, appendix A-1 and appendix A for the following basic models:

- Keg Beer Coolers (Models SBC590, SBC590OS, and SBC635M);
- Assisted Living Refrigerator-freezers (Models ALBF44 and ALBF68); and
- Hotel Refrigerators (Models HTL2 and HTL3).

DOE is also denying FSI's waiver request from the applicable residential refrigerator and refrigerator-freezer test procedures found in 10 CFR part 430, subpart B, appendix A for the following basic models:

- Keg Beer Coolers (Models SBC490B and SBC570R);
- Assisted Living Refrigerators (Models FF71TB, FF73, FF74, AL650R, ALB651BR, AL652BR, ALB653BR, CT66RADA, CT67RADA, AL750R, ALB751R, AL752BR, and ALB753LBR); and
- Ultra-Compact, Hotel Refrigerators (Models FF28LH, FF29BKH, FFAR21H, and FFAR2H).

Under today's decision and order, FSI must test its specific models of its Keg Beer Coolers, Assisted Living Refrigerator-freezers and Hotel Refrigerator variants using the DOE test procedure found in 10 CFR part 430, subpart B, appendix A-1 and, when, applicable, the test procedure found in 10 CFR part 430, subpart B, appendix A.

Issued in Washington, DC, on August 13, 2014.

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[FR Doc. 2014-19768 Filed 08/19/2014 at 8:45 am;  
Publication Date: 08/20/2014]